

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

Jordan Soblick

v.

Allscripts Healthcare
Solutions, Inc.

Case No: 16 C 9909

Judge Samuel Der-Yeghiayan

ORDER


Defendant's motion to dismiss [19] is denied, and motion to strike [19] is granted.

STATEMENT

This matter is before the court on Defendant Allscripts Healthcare Solutions, Inc.'s (Allscripts) motion to dismiss and motion to strike. Allscripts moves to dismiss or strike Plaintiff Jordan Soblick's (Soblick) request in the complaint for an award of attorneys' fees. Allscripts' request does not involve the dismissal of any claim or cause of action in the complaint and is not properly brought pursuant to Federal Rule of Civil Procedure 12(b)(6). The motion to dismiss is therefore, denied. Allscripts' request is properly pursued via a motion to strike. Pursuant to Federal Rule of Civil Procedure 12(f), "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f).

In the instant action, Soblick brings a claim against Allscripts for an alleged violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, *et seq.* Soblick admits that the TCPA does not contain a fee-shifting provision that will award him attorneys' fees if he prevails in this case. Soblick argues, however, that it is premature to deny his request for attorneys' fees, contending that it is still possible that he may recover attorneys' fees. Soblick cites to *Holtzman v. Turza*, 828 F.3d 606 (7th Cir. 2016) to support his argument that he might still be able to recover attorneys' fees in this case. (Resp. 5). However, nothing in *Holtzman* indicates that a court should award attorneys' fees in a TCPA case. As Allscripts correctly points out, the ruling in *Holtzman* actually emphasizes that any attorneys' fees can be paid to counsel from the damages recovery. *Id.* at 608-10. Such a process is not the same as the requested award of attorneys' fees that Soblick seeks in his complaint. Soblick has not provided any legitimate basis at this juncture for an award of attorneys' fees in this case. Therefore, the motion to strike is granted.

Date: 4/12/17


Samuel Der-Yeghiayan
United States District Court Judge